United States Court of Appeals

for the Second Circuit

PETITION FOR REHEARING EN BANC

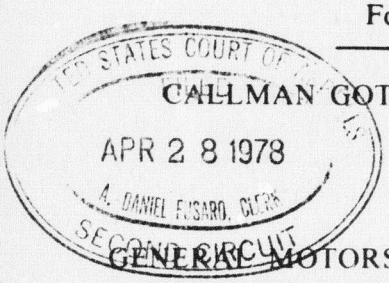
77-7228

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit



CALLMAN GOTTESMAN and PAUL J. PEYSER,

Plaintiffs-Appellants,

vs.

GENERAL MOTORS CORPORATION and E. I. DU PONT de NEMOURS & COMPANY,

Defendants-Appellees.

BP/S

PETITION FOR REHEARING WITH A SUGGESTION FOR A HEARING EN BANC

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In The

United States Court of Appeals

For The Second Circuit

Docket No. 77-7228

CALLMAN GOTTESMAN and PAUL J. PEYSER,

Plaintiffs-Appellants,

vs.

GENERAL MOTORS CORP. and E. I. DU PONT de NEMOURS & COMPANY,

Defendants-Appellees.

PETITION FOR REHEARING WITH A SUGGESTION FOR A HEARING *EN BANC*

To the Honorable Judges of the United States Court of Appeals for the Second Circuit:

STATEMENT

Appellants respectfully petition this Court for a rehearing of the order of this Court dated January 18, 1978 (Mansfield, Moore, Smith, J.J.) which affirmed from the bench at the conclusion of argument, an order and opinion of Judge Metzner dated April 12, 1977 (430 F. Supp. 1047, A119a).

The said order[1] denied appellants' application for payment

1. As entered the order was affirmed with costs. Thereafter, appellees served notice of their intention to enter costs as follows: General Motors $694.72 and du Pont $374.59.

by General Motors and du Pont of their reasonable counsel fees plus disbursements of $345,059.94 for services rendered over a period of some twenty years in the above derivative suit instituted in 1957 on behalf of General Motors following the decision of the Supreme Court (*United States v. du Pont,* 353 U.S. 586, and later 366 U.S. 316).

Because of the importance of the questions presented, it is respectfully suggested that this petition for rehearing be considered by this Court *en banc.*

Although this Court rendered no formal opinion in affirming, Judge Mansfield for the Court dictated a Statement setting forth the reasons for the affirmance. A copy of the Statement is annexed hereto as an Appendix. In that Statement, the Court held that it must affirm stating (p. 14 *infra*):

> "We find no benefit to the defendants of a nature that warrants an award of counsel fees. While it may be true that plaintiffs did succeed in obtaining an accounting from du Pont, nothing was found to be due."

With all due deference, we respectfully submit that in so affirming the Court overlooked the following:

(A) *Gottesman* did confer a significant benefit upon the numerous stockholders of General Motors and, accordingly, the expenses of the suit should be fairly distributed among them by compelling their corporation to make payment.

The Supreme Court decisions holding that du Pont had and continued to have control over General Motors and had used that control illegally over a period of many years for its own benefit in its sales to General Motors (Main Brief, pp. 8, 25, 26; Reply Brief, pp. 2, 3) imposed a clear obligation upon General Motors to protect the interests of its many stockholders.

General Motors should have had an independent accounting conducted at which du Pont would have had the burden of proof and would have been compelled to produce all books, records and data bearing upon its sales to General Motors and its costs and profits in connection therewith. In such an accounting, a court, master, arbitrator or other independent tribunal could determine whether du Pont's self-dealing caused

(a) damage to General Motors which, as the District Court noted, could have been "astronomical" or (b) no damage at all or (c) some damage. To reach any of these results would have required extensive services because of the long period of self-dealing and General Motors itself would have been required to defray the expenses of such services.

But not only did General Motors not do this but throughout it joined with du Pont and tried to prevent *Gottesman* and the stockholders from obtaining any accounting. If General Motors did what it should have done, it is submitted that there would have been no need for twenty years of vigorously contested litigation.

Gottesman in its causes of action charging breach of fiduciary obligation (ninth cause of action and others) in seeking and obtaining a compulsory accounting by du Pont thus accomplished what General Motors itself in the interests of its stockholders should have done and the expenses of procuring the accounting in *Gottesman* should fairly be borne by General Motors even though du Pont finally sustained its burden of showing that General Motors had not been damaged. (See Point I, *infra.*)

(B) This Court in its Statement and the District Court in its opinion (430 F. Supp. 1047) assumed that our application for an award against General Motors and du Pont was based upon the same grounds, this Court stating (*supra*) "We find no benefit to the *defendants*. . . ." (italics added).

However, we have not urged that *Gottesman* benefited or was intended to benefit du Pont or that du Pont was chargeable with obdurate conduct in the litigation. We have urged (Main Brief, pp. 40 *et seq.*; Reply Brief, pp. 18 *et seq.)* that du Pont should be required to bear the expenses of the accounting litigation in which *Gottesman* successfully established its right to sue and then successfully compelled a full accounting and disclosure by du Pont. We urged that even though it was able to convince the Court that it had sustained its burden, du Pont, nevertheless, should pay for the expenses of the accounting required by its own improper actions which had been declared illegal by the Supreme Court.

Neither this Court nor the District Court apparently considered our separate grounds for an award against du Pont (see Point II, *infra*).

POINT I

GOTTESMAN BENEFITED THE GREAT BODY OF GENERAL MOTORS STOCKHOLDERS AND THE CORPORATION SHOULD BE REQUIRED TO PAY.

In its Statement this Court recognized that *Gottesman* did succeed in compelling du Pont to account upon its common law counts[2] but affirmed upon the ground that upon the accounting du Pont was not required to make any payment to General Motors. We respectfully submit that the Court overlooked the fact that even though no recovery was obtained upon the accounting, *Gottesman* nevertheless benefited the stockholders.

It is not necessary, of course, for an award of counsel fees, that a derivative action succeed upon all causes of action for an award will be granted if upon one or more of the causes of action, some significant benefit accrued either to the stockholders or the corporation. What is a sufficient benefit cannot be defined with precision to cover all cases. *Mills v. Electro Auto-Lite Co.*, 396 U.S. 375 (1970), p. 395 footnote 22 cited a number of instances where counsel fees were granted for various types of benefit although no monetary recovery was obtained. Among the cases cited was *Saks v. Gamble*, 154 A.2d 767 (Del. Ch. 1958) which will be discussed *infra*. The Supreme Court has also ruled that the courts have broad discretion in awarding counsel fees in derivative suits and that they should be awarded "when the interests of justice so require" and "to do equity in a particular situation" or "whenever overriding considerations indicate the need for such a recovery" (*Hall v. Cole*, 412 U.S. 1 [1973] at pp. 4, 5).

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2. These diversity common law counts charging breach of fiduciary obligation and demanding an accounting as well as plaintiffs' right to recover counsel fees in connection therewith are governed by the laws of Delaware, the state of incorporation of both du Pont and General Motors (complaint ¶3 admitted; *Alyeska Pipe Line Co. v. Wilderness Society*, 421 U.S. 240, 259 note 31; *Gottesman v. General Motors*, 279 F. Supp. 361, 383; *Hausman v. Buckley*, 299 F.2d 696 [CA 2, 1962]).

The primary thrust of our application for counsel fees is predicated upon the fact that *Gottesman* did succeed upon its common law diversity counts charging breach of fiduciary obligation by du Pont as controlling stockholder, in first obtaining the right to sue for the accounting and then having its demand for accounting by du Pont sustained and compelling du Pont to fully account.

As a result, du Pont as well as General Motors which had joined du Pont and made no effort to cooperate with its stockholders, were compelled to come into court and produce whatever data and records they claimed they still had and which had not been destroyed or disappeared (Main Brief, p. 18; Reply Brief, pp. 6, 7; A69a). After a lengthy trial and appeal, this Court stated in affirming (436 F.2d 1211, 1212), "The trial judge found that du Pont has sustained the burden of demonstrating that its transactions with General Motors were scrupulously fair" (see also Main Brief, p. 42).

After the Supreme Court decision, the stockholders of General Motors were certainly entitled to have du Pont, as controlling stockholder, brought into Court and compelled to account with respect to its self-dealing sales which the Court had condemned. The stockholders were certainly entitled to have all information and data about an enormous claim of their corporation which could have had a strong impact upon the value of their stock.

The District Court recognized the importance of General Motors' claim against du Pont stating it "could well have been astronomical, overshadowing any recovery ever received in any litigation in the history of this country. This could well have justified the expenditure of $345,059.94 [by plaintiffs] for disbursements" (430 F. Supp. 1047, 1049, A123a).

Gottesman did not involve a cause of action for accounting based upon a bare unsupported claim for here the Supreme Court in monumental decisions had found that du Pont's action as controlling stockholder in using its position for its own benefit in its sales to General Motors had clearly violated the law (see Main Brief, pp. 8, 26; Reply Brief, pp. 2, 3).

The question whether these self-dealing sales not only violated the law but also damaged General Motors was not

involved in the government case as this Court noted (436 F.2d 1205, 1209) but had to be determined in a stockholder suit which, this Court also noted, was "almost sure" to follow the Supreme Court decision (268 F.2d at 198).

The complete failure of the management of General Motors to take any step whatsoever after the Supreme Court decision to obtain such an accounting and compel du Pont to sustain its burden before an independent tribunal and its collaborating with du Pont continuously to prevent *Gottesman* from obtaining such accounting, we submit was not at all in the best interests of its stockholders.[3]

In 1957 when *Gottesman* was instituted, du Pont still held its strong controlling interest in General Motors which the Supreme Court pointed out was more potent then than in 1949 when the government suit was instituted (353 U.S. at 607 note 36).

It is also significant, as this Court noted, that at the outset, when General Motors joined with du Pont and unsuccessfully moved to dismiss the complaint and prevent the stockholders from even having their day in court to obtain an accounting, General Motors did not attack the allegations in the complaint that a demand upon its board to institute such a proceeding would have been futile (268 F.2d at 195).

General Motors management also did not see fit to follow the salutary practice adopted by large corporations, where a substantial question of conflict of interest or propriety was raised to have an independent investigation made and the report of such investigation made available to its stockholders (*cf. Lasker v. Burks,* 567 F.2d 1208; *Gall v. Exxon Corp.,* 418 F. Supp. 508).

The excuse given by General Motors for its failure to act — that it was the original management decision in 1949 at the time of the government suit not to sue du Pont — is hardly valid (A99a; Main Brief, pp. 24, 25; Reply Brief, pp. 4, 5).

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3. No General Motors stockholder of the hundreds of thousands after receiving notice of the proposed application by *Gottesman* filed any objection thereto. (Main Brief, p. 2; Reply Brief p. 14; A109a).

Such a decision, of course, cannot be said to be impartial and independent for it was made at a time when du Pont still held its strong controlling interest over General Motors. It was also made at a time when both du Pont and General Motors were trying to dismiss the government suit.

General Motors has made no claim that it ever notified its stockholders of its original decision not to compel du Pont to account or supplied them with the results of any report or investigation which might have been the basis for the original decision (Main Brief, p. 24).

Even after the Supreme Court reversal, General Motors has made no claim, that either prior to or after divestiture, it made any independent investigation as to the validity of its potentially astronomical claim against du Pont. In any event even if made, it never supplied its stockholders with a copy of any report as to such investigation. Throughout, the administration of General Motors was perfectly willing to do nothing and to keep its stockholders completely in the dark as to whether or not their corporation had an enormous claim against du Pont (Main Brief, pp. 24, 25; Reply Brief, pp. 4, 5).

In the Chicago litigation, in connection with divestiture, the Court saw fit to protect the interests of the stockholders of General Motors by appointing an outstanding, independent *amicus curiae* to investigate and report (Main Brief, p. 25; Reply Brief, p. 6). No similar action at all was taken or proposed at any time by General Motors in the interests of its stockholders to determine whether the sales by du Pont condemned by the Supreme Court, had damaged it.

General Motors not only failed to cooperate with *Gottesman* but it joined with du Pont in attempting at the outset to prevent any accounting suit at all and when that was unsuccessful, in attempting at every step thereafter to defeat or minimize any recovery General Motors itself might obtain (Main Brief, pp. 9, 10, 11, 14, 15, 16, 17, 18, 25). Its position is completely incomprehensible and this is particularly true since no claim of wrongdoing whatsoever was made against General Motors in *Gottesman* in connection with the issues which went to trial (Main Brief, pp. 4, 5), and it was the party who would benefit from any recovery.

Although in affirming, this Court stated (Statement, p. 14 *infra*) that "There is no showing of bad faith on the part of the defendants . . ." we submit that the actions of General Motors were clearly "obdurate" and not in the best interests of its stockholders (Main Brief, pp. 38-40; Reply Brief, pp. 15-18).

In its Statement this Court refers to two authorities (*Saks v. Gamble* and *Mills v. Electric Auto-Lite, supra)* and states that they are "clearly distinguishable." (p. 14 *infra*). However, it is respectfully submitted that an analysis of these authorities discloses that they do support the granting of our application against General Motors.

In *Saks,*[4] counsel fees were granted although there was no recovery of damages or creation of a fund. There the management saw fit not to reveal to the stockholders that the corporation owned the stock of another corporation. As a result, the derivative suit was instituted and thereafter the stock ownership was revealed requiring the dismissal of the suit. In granting counsel fees, Chancellor Seitz held that the disclosure of the financial information to the stockholders was sufficient benefit upon which to predicate an award because of the improper action of the management. He stated that by reason of the suit "for the first time the matter has been removed from the area of possible substantial doubt. This is a benefit to the corporation." (Main Brief, p. 29).

So, too, in *Gottesman* it appeared that the administration of General Motors, notwithstanding the decision of the Supreme Court, refused, failed or was unable to compel du Pont to come before some impartial tribunal to sustain its burden for its self-dealing upon an accounting. In addition, as we have noted, General Motors refused to cooperate with its stockholders in *Gottesman* in attempting to obtain such a determination; on the contrary it joined with du Pont in attempting to defeat or minimize any recovery at all — even though it was the party to be benefited.

Because an enormous claim was involved which could vitally affect the value of their stock, General Motors'

4. This case and other Delaware cases are significant for Delaware law applies as to whether an application for an award should be granted. (*Alyeska, supra,* 421 U.S. at 259 note 31; see also footnote 2).

stockholders were certainly entitled to have such a determination made. It was only as a result of *Gottesman* that du Pont was compelled to account and publicly disclose the details of its transactions with General Motors. The question whether or not du Pont could sustain its burden and be required to pay General Motors was resolved for the first time. Thus, as in *Saks, Gottesman* provided a clear benefit to its stockholders — and also to General Motors — by removing the matter from the area of possible doubt.

Saks was cited in *Mills* with approval as one of the cases where awards were granted although no pecuniary benefit was obtained (Main Brief, pp. 30-32). In discussing *Mills,* this Court in its Statement said (p. 14 *infra*):

> "In *Mills* there was relief granted whereas here there was no relief obtained at all either by way of injunction or by way of damages."

We respectfully submit that upon further analysis *Mills* will be found to furnish support for the granting of relief herein against General Motors.

In *Mills* the Court held that counsel fees should be granted where the cause of action was established even though no relief might ultimately be granted under that cause of action (Main Brief, pp. 30, 31, 35, 36). In that connection the Court stated (pp. 396, 397):

> "But regardless of the relief granted, private stockholders' actions of this sort 'involve corporate therapeutics' and furnish a benefit to all shareholders by providing an important means of enforcement of the proxy statute.
>
> To award attorneys' fees in such a suit to a plaintiff who has succeeded in establishing a cause of action is not to saddle the unsuccessful party with the expenses but to impose them on the class that has benefited from them and that would have had to pay them had it brought the suit."

In *Mills* no relief was ultimately granted to plaintiff [552 F.2d 1239 (C.A. 7, 1977), *cert. denied,* 54 L. Ed. 2d 279 (1977)].

Since our application for an award is based primarily upon the common law counts for breach of fiduciary obligation,[5] it is respectfully submitted that *Mills* is applicable to *Gottesman.*

Even though du Pont sustained its burden and was not required to make any payment to General Motors as a result of the accounting, *Gottesman* did benefit the stockholders and General Motors for, as we have shown, *Gottesman* established its right under its common law counts to a compulsory accounting against du Pont and du Pont was compelled to fully account. Under *Milis,* therefore, General Motors should be required to make payment of *Gottesman's* reasonable litigation expenses.

Our briefs also refer to other derivative suits and analogous authorities in Delaware and New York granting awards where the "benefit" was less significant than that obtained in *Gottesman* (Main Brief, pp. 32-34, 37; Reply Brief, pp. 10-14).

It is submitted that by successfully compelling du Pont to account, *Gottesman,* instituted with the approval of this Court, accomplished what General Motors itself should have done. Accordingly, it is respectfully submitted that under the well-recognized exception to the American Rule, *Gottesman* did significantly benefit General Motors stockholders and accordingly General Motors should be required to pay *Gottesman's* reasonable expenses[6] as they may be fixed by the District Court.

POINT II

THIS COURT DID NOT FULLY CONSIDER OUR CONTENTION THAT DU PONT SHOULD BE REQUIRED TO PAY *GOTTESMAN'S* EXPENSES FOR SECURING THE COMPULSORY ACCOUNTING WHICH WAS REQUIRED BY DU PONT'S UNLAWFUL ACTIONS CONDEMNED BY THE SUPREME COURT.

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5. We have made no claim that an award should be granted under Section 4 of the Clayton Act.

6. The amount requested in our application is a fraction of the fair and reasonable value of counsel fees for the services rendered by the many attorneys over almost twenty years (A114a). However, our application took into consideration the lack of any monetary recovery.

In its Statement this Court in affirming the denial of an award against both defendants found "no benefit to the defendants of a nature that warrants an award of counsel fees. . . ."

But we have made no claim that du Pont should be required to pay because it was benefited or intended to be benefited by *Gottesman;* we have made no claim that du Pont should pay because of obdurate conduct. After all, du Pont was the target in an accounting suit which, if successful, could have resulted in an enormous recovery in favor of General Motors. It was certainly entitled to resist the suit and try to establish, if it could, its burden of showing that although its actions and self-dealing sales to General Motors had been condemned by the Supreme Court and held illegal, nevertheless they did not cause damage to General Motors.

In its Statement *(supra)* the Court recognized that *Gottesman* succeeded in compelling du Pont to account (Main Brief, pp. 40-44) with respect to the common law counts charging breach of fiduciary obligation, but stated that "nothing was found to be due" from du Pont upon the accounting, concluding that du Pont was thereby relieved of any responsibility for the expenses of *Gottesman* in securing the accounting.

As we have noted, the thrust of *Gottesman's* claim for payment by du Pont under its common law counts in view of General Motors' failure or refusal to act, was that *Gottesman* succeeded in compelling du Pont as fiduciary to account for its self-dealing sales to General Motors. In connection with such accounting the District Court held that du Pont had the burden of coming forward and establishing the scrupulous fairness of its sales and the test of the propriety of the sales was entirely objective. (Main Brief, pp. 42, 43). We also pointed out that it was no defense that du Pont may have acted in good faith, or with the best of intentions and without intent to defraud (Main Brief, pp. 40-41).

Since *Gottesman's* demand for a compulsory accounting was successful and du Pont was compelled to sustain its burden upon an accounting, it is only fair and reasonable that du Pont, whose illegal actions required such accounting, should be the one required to bear the expenses although after trial the Court

found that it had met its burden of showing that its self-dealing sales had not damaged General Motors.

We have discussed the authorities supporting our claim and du Pont's response in our briefs (Main Brief, pp. 40 *et seq.*; Reply Brief, pp. 18 *et seq.)* and shown that *Gottesman* is entitled to recover an award against du Pont. Neither the District Court in its opinion nor this Court in its Statement made any reference to our contention with respect to our separate claim against du Pont nor to our authorities in connection therewith.

POINT III

THE PETITION FOR REHEARING WITH SUGGESTION FOR A HEARING *EN BANC* SHOULD BE GRANTED.

This Court as did the District Court recognized that *Gottesman* in good faith rendered long and conscientious services and expended large sums in connection with the enforcement of the rights of General Motors stockholders. To grant an award for these services, it is submitted, would not violate any policy but would be in accord with the authorities and the doctrine requiring the Court "to do equity in a particular situation" (*Hall v. Cole, supra,* Main Brief, p. 23).

It is therefore requested that the petition for rehearing with the suggestion that the important issues presented be heard by this Court *en banc* be granted.

It is further respectfully requested that after rehearing, the order of affirmance of this Court be vacated and the order appealed from be reversed and the matter remanded to the District Court which has indicated full knowledge of the extensive services rendered (430 F. Supp. 1047, 1048) for a determination of the reasonable value of the services rendered by plaintiffs' counsel and the amount of disbursements to be paid by General Motors and/or du Pont.

Respectfully submitted,

NETTER DOWD NESS ALFIERI & STERN
General Counsel for Plaintiffs-Appellants

Henry L. Bayles
Richard Netter
Leo Brady
Arthur B. Netter
Of Counsel

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Dkt. No. 77-7228

CALLMAN GOTTESMAN and PAUL J. PEYSER,

Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION and E.I. DU PONT de NEMOURS & COMPANY,

Defendants-Appellees,

CLENDON H. LEE,

Appellant.

Before:

HON. WALTER R. MANSFIELD, LEONARD P. MOORE and J. JOSEPH SMITH, *Circuit Judges.*

New York, N.Y.
January 18, 1978

- -

Statement made by the court at disposition of appeal in open court.

- -

We have read the briefs and reread them and we have looked at the record and read Judge Metzner's opinion. This has been an epic case. It has required countless hours of expert professional services by eminent counsel and an enormous outlay in expenses. The services have been rendered over what seems like an interminable period of time, rivaling *Jaundice v. Jaundice.* I imagine it would have seemed even more interminable 18 years ago if we knew it was going to extend as

long as this. There is no question about the fact that the litigation has involved complex facts and difficult questions of law.

In accordance with our custom, when the rule of law and its applicability to the facts of the case are clear and a written opinion would not contribute anything of precedential value, we are going to dispose of this case now, from the bench. We recognize all of the factors that you and other plaintiffs' counsel have mentioned. We sympathize with your position, in view of all the work you have done. But we feel that we must affirm here essentially for the reasons stated by Judge Metzner in his opinion, because it seems to us that the applicable rule here is the American Rule as it has been explained by the Supreme Court in *Alyeska v. Wilderness Society*. That Rule requires each litigant to bear his own costs and expenses of litigation, absent some exception permitting recovery from others, such as a statutory authority, the creation of a fund, a contract or agreement for a fee, a showing of bad faith or misconduct on the part of the other side, or a benefit to the client.

Applying these principles here, we find no statutory authority for an award. Section 4 of the Clayton Act entitles a party to recover counsel fees only if there is a recovery of damages and here there was none. We find no benefit to the defendants of a nature that warrants an award of counsel fees. While it may be true that the plaintiffs did succeed in obtaining an accounting from duPont, nothing was found to be due. To recover attorneys fees there must be more than just the clarification of some principle of law. The cases relied upon such as *Saks v. Gamble* and *Mills v. Electro Auto Light* are clearly distinguishable. *Saks* is somewhat sui generis because of the fact that there was concealment or nondisclosure of the parent-subsidiary relationship between the parties and there was the clandestine interest of the parent in the independent firm that was eventually disclosed. In *Mills* there was relief granted whereas here there was no relief obtained at all either by way of injunction or by way of damages. We find no basis for an award of attorneys fees to the loser. There is no showing of bad faith on the part of the defendants, no agreement that covers an award of a fee regardless of how the case might come out, and no creation of a common fund.

Absent some exception to the American Rule that would entitle counsel here to a fee, we must affirm, as I said, essentially for the reasons stated by Judge Metzner in his opinion.

A 201 Affidavit of Service by Mail — LUTZ APPELLATE PRINTERS, INC.

COURT OF APPEALS-SECOND CIRCUIT

CALLMAN GOTTESMAN and PAUL J. PEYSER,
Plaintiffs-Appellants,

- *against* -

GENERAL MOTORS CORPORATION and E.I. DU PONT de NEMOURS & COMPANY,
Defendants-Appellees,

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Richard A. Freund, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 84-05 First Avenue, North Bergen, New Jersey 07047. That on the 18 *day of* April *1978 deponent served the annexed* Petition

upon Covington & Burling *attorney(s) for*

in this action, at 888 16th St. N.W. Washington D.C. 20006

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 18th *day of* April *19* 78

Richard A. Freund

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979

A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC.

COURT OF APPEALS-SECOND CIRCUIT

CALLMAN GOTTESMAN and PAUL J. PEYSER,
Plaintiffs-Appellants,

- against -

GENERAL MOTORS CORPORATION and E.I. DU PONT de NEMOURS & COMPANY,
Defendants-Appellees.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF New York *ss.:*

I, JAMES A. STEELE *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 112 West 136th Street, New York, New York

That on the April *day of* 18th *19*78 *at* 1. John J. Higgins-Edward B. Wallace
2. Clendon H. Lee

deponent served the annexed Petition *upon*
1. 767 Fifth Avenue, N.Y. 10022
2. 1 Dag Hammerskjold Plaza, N.Y. 10017
the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the attorneys *herein,*

Sworn to before me, this 18th
day of April *19*78

James A. Steele
JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979